Jay E. Gruber
Senior Attorney
Law & Government Affairs

Room 420
99 Bedford Street
Boston, MA 02111
617 574-3149
FAX (281) 664-9929

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BY HAND AND ELECTRONIC MAIL

Mary Cottrell, Secretary
Department of Telecommunications and Energy
One South Station
Boston, MA 02110

Re: D.T.E. 04-33

Dear Secretary Cottrell:

This letter constitutes the reply comments of AT&T Communications of New England, Inc. ("AT&T")[1] pursuant to the Department's August 23 procedural notice requesting comment on the effect of the FCC's *Interim Rules Order*[2] on the present arbitration proceeding as well as on Verizon's Notice of Withdrawal of Petition for Arbitration as to Certain Parties ("*Withdrawal Notice*").

There is nothing in Verizon's comments that provide the Department with any basis to reject AT&T's recommendations for how to proceed with the negotiation and arbitration of contract amendments, as described in AT&T's comments filed on September 1, 2004. AT&T will not repeat those recommendations here. AT&T will, however, briefly address the "subtext" in Verizon's filing: the putative powerlessness of the Department to act in any way that is not in lock-step with the FCC.[3]

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[1] AT&T files these reply comments on behalf of itself and all other AT&T entities in Massachusetts, including Teleport Communications – Boston ("TCG") and ACC National Telecom Corp. ("ACC").

[2] *In the Matter of Unbundled Access to Network Elements and Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04 313 and CC Docket No. 01-338, Order and Notice of Proposed Rulemaking, FCC 04-179 (August 20, 2004) ("*Interim Rules Order*").

[3] Indeed, at times, Verizon would have the Department act in lock-step with the FCC as Verizon imagines it, rather than in accordance with what the FCC says.

Verizon's sole focus on the predicate for Department action in resolving interconnection agreement disputes in this docket is the FCC *Interim Rules Order* and *USTA II*. Nowhere does Verizon acknowledge or address the authority and, indeed, obligation of the Department to enforce long-established state policy to promote competition, when arbitrating interconnection agreement language. As AT&T has previously pointed out, state commissions have authority to implement unbundling obligations "*including*" those established by the FCC.[4] State commissions also have authority to make unbundling determinations left open by the FCC.[5] Moreover, the 1996 Act expressly permits states to adopt and enforce pro-competitive measures that go beyond the requirements of federal law.[6] Indeed, the 1996 Act prohibits the FCC from promulgating regulations that would preclude a state from enforcing pro-competitive unbundling requirements beyond those established by the FCC so long as they are consistent with, and do not substantially prevent implementation of, the "requirements of this section and the purposes of this part."[7]

In establishing a procedure for arbitrating any issues left unresolved after the parties comply with their statutory and contractual duties to engage in good faith negotiations, the Department should remain cognizant of the full range of "applicable law" to which Verizon's interconnection agreements are subject. In addition, the Department should steadfastly protect and implement the state policies in favor of competition that it established almost twenty years ago and has been pursuing ever since.

Thank you very much.

Respectfully submitted,

Jay E. Gruber

cc: D.T.E. 04-33 Service List

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4 *See*, 47 U.S.C. § 252(c)(1), (e)(2)(b) (emphasis added).

5 47 U.S.C. § 252(c).

6 47 U.S.C. § 252(e)(3).

7 47 U.S.C. § 251(d)(3). As for the purposes and objectives of the referenced section and part, the header leaves no doubt: "PART II – DEVELOPMENT OF COMPETITIVE MARKETS." The FCC, therefore, does not have the authority under the 1996 Act to prevent states from ordering unbundling beyond that required by the FCC when such unbundling furthers the pro-competitive purposes of the 1996 Act.